Chandka

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5073 OF 2007
IN
INTERIM NOTICE NO. 2509 OF 2006
IN
R.A.E. SUIT NO. 1966/6048 OF 1986

Soli Sorabjee & Ors. ..Petitioners

versus

M/s. Warden & Company (India) Private Limited ..Respondents

Mr. V. V. Tulzapurkar i/b. Mr. S. M. Railkar for the Petitioners.

Mr. G. S. Godbole with M. S. Dehlvi i/b. M/s. Negandhi, Shah & Himayatullah for the Respondents.

CORAM : S. A. BOBDE, J.
DATE : 17TH OCTOBER, 2007.

P.C.

. The Petitioners are aggrieved by the rejection of their application for amendment. The Petitioners have sought amendment to the plaint in which they have already made a prayer for possession of the suit flat, but not for the garage. As regards the garage, there is a pleading in the plaint, vide paragraph 1 that the Respondents are also tenants in respect of the said garage in the compound of the

building. The Petitioners apparently omitted to make a specific prayer for recovery of possession of the garage. They sought to introduce that prayer by way of an amendment to the plaint.

2. Though the trial court began by saying that an amendment which changes the nature of a suit should not be allowed it has not come to such a conclusion while rejecting the application. The trial court has rejected the application for amendment on the ground that it can be safely inferred that the tenancies regarding the flat and the garage are separate tenancies, particularly, because there is no whisper regarding the violation of the terms and conditions regarding the garage premises. It is difficult to see how an inference that there are separate tenancies can be drawn in the absence of specific allegations about the violation of the terms and conditions only specific to the garage. Further, the trial court seems to be of the view that allowing the amendment will raise a question about the applicability of Article 61 of the Limitation Act, which prescribes reckoning of a period of limitation from the date of violation of the terms of tenancy. This appears to be again

based on the conclusion that there is a separate tenancy.

3. In the circumstances, it is not possible to sustain the order of the trial court, the order is set aside. Amendment is allowed in order to avoid multiplicity of litigation. All contentions of both the parties on merits are left open. Petition is disposed of.

(S.A. BOBDE, J.)